

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GODSON ERUCHALU,

Appellant,

v.

US BANK NATIONAL ASSOCIATION et al.,

Appellees.

Case No. 2:15-cv-01266-RFB

ORDER

I. INTRODUCTION

Before the Court is Appellant Eruchalu’s appeal of a Bankruptcy Court order denying injunctive relief. The Court finds that this appeal is moot and must therefore be dismissed.

As a preliminary matter, for the good cause stated in the Motion For Leave (ECF No. 19) to supplement the record, the Court grants that Motion and will take judicial notice of the supplement attached to the Motion.

II. DISCUSSION

This appeal arises out of the bankruptcy court’s order on June 12, 2015 dismissing Appellant’s Emergency Motion for TRO Injunctive Relief and to Stay Sale Pending the Ruling on Defendant’s Motion to Confirm Automatic Stay Status. Appellant filed his notice of appeal of the dismissal order to be heard by the Bankruptcy Appellate Panel on or around June 23, 2015. Appellee U.S. Bank filed a Statement of Election for Appeal on or around June 26, 2015 to have the appeal heard by the United States District Court for the District of Nevada pursuant to Rule

1 8005 of the Federal Rules of Bankruptcy Procedure.

2 The Court finds that this appeal must be dismissed as moot for a few reasons. An appeal
3 is moot if no present controversy exists as to which an appellate court can grant effective relief.
4 W. Coast Seafood Processors Ass'n v. Natural Res. Def. Council, 643 F.3d 701, 704 (9th Cir. 2011)
5 First, this appeal is moot because the subject property in this case has already been foreclosed upon
6 and hence this Court can grant no relief. A foreclosure sale occurred in this case on April 8, 2016.
7 Appellant cannot therefore obtain relief of an appeal of an order denying him injunctive relief as
8 to this foreclosure sale. Vegas Diamond Props., LLC v. FDIC, 669 F.3d 933, 936 (9th Cir. 2012).

9 Second, the underlying merits of the bankruptcy case and federal case have already been
10 adjudicated. In Case No. 2:15-cv-00946-JCM, the district court affirmed the bankruptcy court's
11 order dismissing the adversary proceeding applying to the subject property in this case. There was
12 no successful appeal of this determination. In Case No. 2:12-cv-1264-RFB-VCF, this Court
13 entered judgment against the Appellant and denied injunctive relief as to the subject property. No
14 successful appeal was taken of this determination. The judgments in these cases are now final and
15 Appellant has not been successful on the merits. He therefore can obtain no relief here of the
16 denial of an order for injunctive relief and this Court cannot order such relief. Vegas Diamond
17 Props., LLC, 669 F.3d at 936; see also Securities & Exch. Comm'n v. Mount Vernon Memorial
18 Park, 664 F.2d 1358, 1361 (9th Cir.1982) (holding that appellant's appeal is merged with the
19 dismissal of underlying claims).

20 Additionally, the Court denies Appellant's Motion for Disqualification (ECF No. 20). The
21 Court construes this as a motion pursuant to 28 U.S.C. §§ 144 and 455. Appellant has not asserted
22 legally sufficient detail in his affidavit or motion to establish any bias on the part of the Court.
23 Appellant filed his motion untimely. Appellant does not assert an extrajudicial basis for bias by
24 the Court. Taylor v. Regents of Univ. of California, 993 F.2d 710, 712 (9th Cir. 1993) (holding
25 that adverse rulings alone are insufficient to demonstrate bias and to compel recusal).

26 ...

27 ...

28 ...

1 **III. CONCLUSION**

2 IT IS HEREBY ORDERED that the appeal in this case is DISMISSED as moot.

3 IT IS FURTHER ORDERED that the Motion [19] for Leave is GRANTED; the Motion
4 [20] for Disqualification is DENIED; and the Motion [25] to Strike is DENIED.

5 The Clerk of Court is instructed to close this case.

6
7 DATED this 21st day of February, 2018.

8
9 

10 _____
11 **RICHARD F. BOULWARE, II**
12 **UNITED STATES DISTRICT JUDGE**